

**April 19, 2016**

Dennis Moen  
Business Manager  
Thomas Brice  
Alaska District Council of Laborers  
[Sent Electronically]

Re: **Legal Memorandum on HB 379**

Gentlemen;

You have asked for a legal opinion on the question:  
*Whether the pending HB 379 Bill presents any conflict with  
Alaska or federal law?*

Briefly stated, the answer is; **Yes** HB 379 runs contrary to the "*Impairment of Contracts*" provisions of the Alaska and US Constitutions; runs contrary to Alaska Superior Court decisions (referenced below), and may be contrary the legal principles set forth in the Public Employment Relations Act, A.S. 23 40 et seq.

Before turning to the points of law outlined below, it is essential to note the facts of the current 'Local 71(Labor, Trades, & Crafts)-State of Alaska' labor contract which contain a 0% wage increase for each year of its three year term. Hence there is no fiscal note attached.

**POINTS OF LAW:**

First, the US Constitution, Article 1, section 10 clause 1, states that **"No state shall ... pass any law... impairing the obligations of Contracts"**. Thus the US Supreme Court ruled against a states' attempt to "legislate" against contractual terms in US Trust Co. v. New Jersey, 431 U.S. 1 (US 1977). HB 379 presents the same legal conflict with the impairment of contracts clause in any manner in which it attempts to impair the extant three year Local 71-State of Alaska contract. <sup>i</sup>

Second, the **Alaska Constitution article 1, section 15** similarly contains a "no impairment of contracts" provision. It is yet gray and unclear whether HB 379's section 15 language properly avoids this constitutional conflict.

Third, and perhaps most on point, the Alaska Superior Court has specifically ruled that salary steps in a Labor Agreement are indeed legally protected terms of contract. See, **Public Employees Local 71 v. ASD**, 3AN-87-534Civ; **ASD v. AEA**, 3AN-86-12840Civ. In both cases, Third Judicial District Superior Court Judge Hunt issued a TRO against the government's attempt to evade salary/step schedules contained in a labor contract.

Fourth, the **"unfair labor practice" prohibitions** in A.S. 23.40.110(a)5 proscribe the State from 'bad faith bargaining' tactics. Specifically, an Employer cannot reach an Agreement, and then work to defeat it. This requires a complex review of the facts, and thus I must defer opinion on that issue.

Finally, it is worth noting that the Public Employment Relations Act, ["PERA"] A.S.23.40 et seq, was supported by Governor Walter J. Hickel(R) and his successor Gov'r Keith H. Miller (R) for the purpose of bringing private sector NLRA rules to our Alaska public sector. These long-ranges principles should not be forgotten.

Sincerely;

Kevin Dougherty  
Attorney & General Counsel

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<sup>1</sup> There is also a complex constitutional question whether HB 379 runs afoul of the separations of powers doctrine, outlined in Public Defender Agency v. Superior Court 534 P.2d 947 (Alaska 1975).